IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3650 of 2007

(S.C. NO. 370/06 OF THE COURT OF ADDITIONAL ASSISTANT SESSIONS JUDGE, ALAPPUZHA).

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PETITIONER/ACCUSED NO.2:

SUMESH, S/O.APPUKUTTAN,
VAIDYA BHAVAN, PALAPPRA, CHINGOLI PANCHAYATH,
CHINGOLI VILLAGE.

BY ADV. SRI.S.SHANAVAS KHAN.

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3650 of 2007

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Dated this the 6th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 307 I.P.C. The petitioner was enlarged on bail at the crime stage. He had entered appearance before the committal court and he had been committed to the Court of Sessions. S.C. 370 of 2006 is now pending before the Addl. Asst. Sessions Court, Alleppey against the petitioner. He has not thereafter appeared before the learned Sessions Judge. Consequent to the non-appearance of the petitioner before the learned Sessions Judge, coercive processes have been issued against the petitioner. The petitioner finds such coercive processes issued by the learned Sessions Judge chasing him. The co-accused, who were available for trial have already been tried, found not guilty and acquitted, it is submitted.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due

to reasons beyond his control. He is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Sessions Judge and explain to the learned Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Sessions Judge would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Judge, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned

Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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